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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
MOUSTAPHA MOUSTAPHA,
Defendant.

No. CR 24-CR-168-MCS

MOTION TO SUPPRESS ITEMS
SEIZED DURING UNLAWFUL SEARCH

PLEASE TAKE NOTICE that on August 13, 2024, or as soon thereafter as counsel may be heard, in the Courtroom of the Honorable Mark C. Scarsi, United States District Judge, defendant Moustapha Moustapha will bring on for hearing the following motion to suppress.

This motion is based on the attached Memorandum of Points and Authorities, Exhibits and Declarations, the

1 application to shorten time, the complete file, and any
2 argument or evidence presented at a hearing on the matter.
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4 Respectfully Submitted,
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6 Dated: August 8, 2024
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8 //s// Meghan Blanco
9 MEGHAN BLANCO
10 COUNSEL FOR DEFENDANT
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I. Introduction and Facts

Artur Gevorg, who was visiting the family that day, answered. Agents pulled Artur outside to interrogate him. Moustapha's wife, Hiba, then came to the door. Agents asked her for consent to enter. When she said no, one of the agents, without judicial authorization or legal justification, directed the group to "expedite the operation and enter[] the residence and conduct[] a safety sweep of the Target Residence." *Id.* Agents used physical force to pull Hiba onto the front porch with her sick, six-year-old daughter by her side. See Declaration of Hiba Salem. Then they entered the residence with guns

1 drawn. They made their way to the lower portion of the
2 house, where Hiba's mom was napping.

3 Agents forcefully broke into her room and pointed
4 their guns at her as she slept in her bed. They directed
5 her to stand up, pressed a gun against her back, and
6 pushed her in front of them, at gun point, as they
7 continued to search the residence, using her as a human
8 shield as they entered each room. Terrified and confused,
9 she pleaded with them to let her go.

10 Agents claim they did not conduct a "search of the
11 Target Residence" until after a search warrant was
12 obtained. However, their legal characterization of their
13 actions is wrong. A rose by any other name smells as
14 sweet. Immediately upon entering the residence, agents
15 conducted a thorough search of each room within the
16 residence. They opened and searched drawers, closets,
17 containers, luggage and a purse. Approximately \$4000 was
18 removed from Ms. Salem's carry-on luggage. As they
19 rummaged through the contents of the house, agents joked
20 about "smelling drugs." None of the remaining occupants
21 were allowed to leave, freely walk around the house, talk
22 to each other, or use their phones unless an agent
23 approved and monitored their phone use. They would not
24 allow Hiba to leave the residence to pick up her 12-year-
25 old son from school. Nor would they allow her to call a
26 babysitter to pick him up until she agreed to allow her
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1 phone use and conversation to be monitored. Agents held
2 the telephone while she made the call.

3 The government's unlawful search of the residence and
4 detention of its occupants continued for hours, long after
5 the residence had been cleared and its occupants,
6 including a six-year-old girl, detained. At approximately
7 5:00 p.m., an agent returned with a warrant and seized
8 several items from the residence. They also arrested
9 Hiba, although they released her without charges after
10 they booked her into a county jail and seized her phone.

11 At the conclusion of their search, the government
12 claimed that Moustapha was a "DEA fugitive wanted on a
13 probable cause arrest." However, at no point prior to his
14 arrest was Moustapha an actual fugitive. This is because
15 DEA agents never applied for a warrant to arrest him. Nor
16 did they file a criminal complaint against him. Instead
17 of doing either of these things,¹ which, if granted, may
18 have allowed agents to lawfully enter a residence to

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20 ¹ On February 6, 2024, SA West transported several
21 cellular telephones he seized on February 1 to a "LAFD
22 Tech Specialist Jimmy Huang." The phones were then
23 returned to the DEA evidence locker weeks later, on
24 February 22. It appears that the government likely
25 conducted searches of these devices during that time.
26 However, between February 1 and February 22, agents never
27 obtained a warrant to search any of the devices seized on
28 February 1. The contents of the telephones have not been
produced to defense counsel; nevertheless, the
government's actions in searching the devices are still
illegal. If agents did illegally search any device seized
in this case, the government has a duty to memorialize
that illegal conduct and discover the information to
defense counsel. To date, this has not occurred.

1 effectuate an arrest, on February 12, 2024 - twelve days
2 after agents unlawfully entered and searched the Malibu
3 residence - agents lied to AUSA Scott in an effort to gain
4 permission to enter Moustapha's apartment, without a
5 warrant. Specifically, SA Shaffer told AUSA Scott that
6 agents knew where Moustapha lived and had obtained consent
7 to enter the residence from the person whose "name"
8 appeared on the apartment's lease. This was a blatant
9 lie. See Exhibit B. Agents never obtained consent from
10 the named lessee; they obtained consent from the named
11 lessee's brother, whom they knew did not live at the
12 residence. AUSA Scott, seemingly acting in good faith on
13 SA Scaffer's patently false representation, authorized
14 agents to enter Mr. Moustapha's apartment, without a
15 warrant, to arrest him.

16 II. Argument

17 A. Agents Illegally Entered the Residence

18 The Fourth Amendment of the United States Constitution
19 asserts: "The right of the people to be secure in their
20 persons, houses, papers, and effects, against unreasonable
21 searches and seizures, shall not be violated, and no
22 warrants shall issue, but upon probable cause, supported
23 by Oath or affirmation, and particularly describing the
24 place to be searched, and the persons or things to be
25 seized." (U.S. Const., Amend. IV)

1 A search and seizure without a warrant is presumptively
2 illegal and must be justified by the prosecution. The
3 prosecution bears the burden of establishing the legality
4 of a warrantless search and seizure. "It is hornbook law
5 that searches conducted outside the judicial process,
6 without prior approval by judge or magistrate, are per se
7 unreasonable under the Fourth Amendment's warrant
8 requirement unless they fall within one of a few narrow
9 exceptions thereto." *Coolidge v. New Hampshire* (1971) 403
10 U.S. 443, 454-455; see also *Minley v. Arizona* (1978) 437
11 U.S. 385, 390. Further, when law enforcement officers
12 conduct a warrantless search and seizure, the prosecution
13 has the burden of justifying the action under a recognized
14 exception to the constitutional warrant requirement.
15 *Welsh v. Wisconsin* (1984) 466 U.S. 740, 749-750.

16 Here, the government cannot justify agents' entry into
17 Mr. Moustapha's residence. Agents sought a warrant, but
18 when they grew impatient with the time it took the court
19 to review the warrant application, they opted to plow
20 ahead without one.

21 The fact that agents initially asked Ms. Salem for
22 consent to enter belies their post hoc claim that an
23 "exigency" existed. If they truly believed that there
24 were exigent circumstances to enter the residence, they
25 would not have sought consent to enter.

1 The evidence demonstrates that the agents subjectively
2 did - just as any reasonable officer objectively would -
3 know that they had no legal right to enter the residence
4 without consent or a warrant. Their attempted use of Ms.
5 Salem's refusal to provide consent as justification to
6 search, is simply illogical.

7 Under the government's post hoc rationale, they can
8 simply ask a resident for consent to enter any property,
9 and then when the resident declines, use that refusal as
10 legal justification to go in anyway. Such logic, if
11 sanctioned by the Court, would turn the Fourth Amendment
12 on its head and would effectively eliminate the warrant
13 requirement. "It is axiomatic that the 'physical entry of
14 the home is the chief evil against which the wording of
15 the Fourth Amendment is directed.'" *Welsh v. Wisconsin*,
16 466 U.S. 740, 748 (1984).

17 B. Once they Illegally Entered the Residence, Agents
18 Conducted an Illegal Search of It

19 Once inside, agents conducted a search of the residence
20 under the guise of a "protective sweep." Since they were
21 not authorized to enter the residence, any protective
22 sweep would be unreasonable and in violation of the Fourth
23 Amendment.

24 However, the government's post hoc characterization of
25 its search of the residence without a warrant as a
26 "protective sweep," is incorrect.

1 In *Maryland v. Buie*, the Supreme Court recognized that,
2 in very limited circumstances, officers may conduct
3 "protective sweep" without a warrant. *Maryland v. Buie*,
4 494 U.S. 325 (1990). In *Buie*, the defendant and another
5 man robbed a restaurant. One of the robbers was wearing a
6 red jogging suit. Police obtained an arrest warrant for
7 the defendant and executed it at his house. There, one
8 officer shouted into the basement for everyone to come up.
9 When the defendant did so, he was promptly arrested.
10 Another officer then entered the basement 'in case there
11 was someone else' down there. In plain view the officer
12 saw a red jogging suit, which he seized. Charged with the
13 restaurant robbery, the defendant moved to suppress the
14 jogging suit. The trial court denied the motion. That
15 ruling was overturned by the Maryland Court of Appeals,
16 that state's highest tribunal, which invalidated the
17 search because the officers lacked probable cause to
18 search the basement. That decision, in turn, was vacated
19 by the United States Supreme Court, which concluded that
20 the probable cause standard did not apply to a 'protective
21 sweep.' The court explained that as incident to an arrest
22 'the officers could, as a precautionary matter and without
23 probable cause or reasonable suspicion, look in closets
24 and other spaces immediately adjoining the place of arrest
25 from which an attack could be immediately launched.' But
26 it stressed that beyond that, an inspection undertaken

1 outside the immediate area of the arrest must be supported
2 by 'articulable facts which, taken together with the
3 rational inferences from those facts, would warrant a
4 reasonably prudent officer in believing that the area to
5 be swept harbors an individual posing a danger to those on
6 the arrest scene."

7 Here, agents searched the residence for hours, without
8 making an arrest or obtaining a warrant. They looked
9 inside bags, closets, cabinets and drawers, including in
10 areas they believed they would find contraband. They
11 continued to search for hours after the residence had been
12 cleared and all its occupants detained. As they did this,
13 one agent even joked about his discovery of drugs by
14 saying he "smelled [them]" as he handled a box containing
15 narcotics.

16 C.Agents Lied to Gain AUSA Permission to Illegally Enter
17 the Marina Del Rey Apartment to Arrest Him

18 Twelve days after illegally entering and searching Mr.
19 Moustapha's residence, agents continued their course of
20 illegal conduct by lying to AUSA Scott to obtain his
21 permission to enter a different residence they believed
22 Mr. Moustapha was staying in. On February 12, 2024,
23 agents determined that Mr. Moustapha was staying in an
24 apartment in Marina Del Rey. They spoke to the lessee's
25 brother, who did not live at the residence, and asked for
26 consent to enter the residence, which he gave. However,
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1 they falsely told the AUSA that the lessee - not the
2 lessee's brother - agreed to allow agents to enter the
3 residence. Based on this false representation, AUSA Scott
4 authorized a warrantless entry.

5 At the time agents entered the Marina Del Rey residence,
6 they had not sought a warrant to arrest Mr. Moustapha and
7 had no legal authority to enter the residence without a
8 valid warrant or valid consent. Instead of taking the
9 required steps to enter the residence lawfully, they acted
10 in willful violation of Mr. Moustapha's constitutional
11 rights and of their duty of candor to the AUSA by falsely
12 stating they obtained consent to enter the residence from
13 the lessee.² Accordingly, all facts surrounding Mr.
14 Moustapha's illegal arrest should be suppressed.

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25 ² Interestingly, they did not appear to contact the AUSA when they
26 attempted to gain Ms. Salem's consent the Malibu Residence. Nor did
27 they appear to contact the AUSA when they illegally entered and
28 searched the Malibu Residence February 1, 2024.

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Respectfully Submitted,

//s// Meghan Blanco
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